

Remarks:

Reconsideration of the application is requested. Claims 1-24 and 49-52 are now in the application. Claims 1 and 18 have been amended. Claims 49-52 have been added.

Support for new claims 49 and 50 can be found in Fig. 30A and paragraph [0367] of the specification.

With regard to the election/restrictions, the claims listing in paragraph 2 of the Office action is incorrect. Claims 25-48 were canceled in the response dated October 12, 2007.

In item 9 of the Office action, the Examiner rejected claims 1-8, 19, and 24 as being fully anticipated by Merritt '950 under 35 U.S.C. § 102(b). The rejection has been noted and the claims have been amended in an effort to define more clearly the invention of the instant application. Support for the changes is found in paragraphs [0362] and [0363] and Figs. 30A and 30B of the specification.

Before discussing the prior art in detail, a brief review of the invention as claimed is provided. Amended claim 1 calls for a suture retainer having the following features:

a first section including a first surface and further including an extension member extending from said surface, and

a second section including a second surface, said second surface opposing said first surface and being configured for receiving the extension member, the first and second sections being bondable together with the application of an energy source;

said first surface being configured to abut the suture and said second surface being configured to abut the suture. (Emphasis added by Applicant.)

Merritt '950 teaches an elastic cord lock. The cord lock has a first section and a second section. Each section has a surface and the surfaces oppose each other. An extension member runs from one surface and is received in a second surface. However, Merritt '950 does not teach to hold the cord by abutting the suture with each of the surfaces. Rather, Merritt '950 teaches defining two tortuous paths through the connector parts by using concave sidewalls. *See* col. 2, ll 15-23.

New claims 49 and 50 further distinguish the invention from Merritt '950. Claim 49 further limits claim 1 by describing the position shown in Fig. 30A where the suture (764, 766) is sandwiched by the first surface (748) and the second surface (756). In contrast, the relative spacing of the surfaces is irrelevant in Merritt '950, because Merritt '950 relies on a tortuous path to hold the cord not sandwiching.

Claims 2-8, 19, and 24 depend on claim 1 and are novel with regard to Merritt '950 for the same reason as claim 1.

In item 4 of the Office action, the Examiner rejected claim 18 as being unpatentable over Merritt '950 under 35 USC § 103(a). Claim 18 describes that, "At least a portion of at least one of the first and second sections contacting the other of the first and second sections is textured." Texturing is discussed in the specification in paragraph [0410]. Increasing the surface area improves ultrasonic welding. Texturing improves ultrasonic welding by increasing the bonding area and because ultrasonic welding affects the surface of the materials being bonded.

Amended claim 18 is further different because the textured surface is being defined as the surface that contacts the other section. In contrast, the projections taught by Merritt '950 are not involved in the inter-section contact.

Accordingly, Merritt '950 fails to form a *prima facie* case of obviousness with respect to the invention according to claim 18 because it does not teach a textured surface that contacts the other section.

In item 20 of the Office action, the Examiner rejected claim 20 of the instant application as being unpatentable over Merritt '950 in view of Hart '824 under 35 USC § 103(a). However, Merritt '950 should not be combined with Hart '824 because Merritt '950 involves nonanalogous art that one with ordinary skill in the art would not be aware of when dealing with suture anchors.

Merritt '950 is nonanalogous art because the reference deals with elastic cords, which behave differently than sutures. Elastic cords are relatively large compared to sutures, are much more

elastic (both tensily and compression). Accordingly, holding an elastic cord via a tortured path (*see* col. 2, ll 15-23) is possible.

So, one with ordinary skill in the art of suture anchors would know that the means for holding an elastic cord would not work with a suture because a suture is much smoother and harder than an elastic cord. Accordingly, one with ordinary skill in the art would not combine the reference of Merritt '950 with Hart '824 to make a biodegradable suture anchor. Therefore, the invention according to claim 20 is not obvious.

Claim 20 is patentable for the additional reason that it depends from claim 1, which has been amended to distinguish it further from Merritt '950.

In item 7 of the Office action, the Examiner rejected claim 21 as being unpatentable over Merritt '950 in view of Tokushige et al. '634 under 35 USC § 103(a). For the reasons discussed with the rejection in item 6, Merritt '950 is nonanalogous art with suture anchors. Accordingly, one with ordinary skill in the art would not knock to Merritt '950 for teaching regarding suture anchors. Therefore, the invention according to claim 21 is not obvious.

In item 8 of the Office action, the Examiner rejected claim 21 as being unpatentable over Merritt '950 in view of Bartlett '372 under 35 USC § 103(a). For the reasons discussed with the rejection in item 6, Merritt '950 is nonanalogous art with suture anchors. Accordingly, one with ordinary skill in the art would not knock to Merritt '950 for teaching regarding suture anchors. Therefore, the invention according to claim 21 is not obvious.

In view of the foregoing, reconsideration and allowance of claims 1-24 and 49-52 are solicited. Applicants also request the rejoinder of claims 9-17 in light of the allowance of claim 1, which is generic. In the event the Examiner should still find any of the claims to be unpatentable, please telephone counsel so that patentable language can be substituted.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$60 in accordance with Section 1.17 is enclosed herewith.

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No fee is believed due. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 50-3410 (Docket No. 782-A03-023).

Respectfully submitted,

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